

REMARKS

Applicant re-submits this amendment following an Office communication mailed on February 17, 2009, which notified Applicant of a non-compliance in the amendment filed on January 29, 2009. Specifically, the communication stated that the status identifier for claim 20 was not proper. This discrepancy has been remedied. All of the remarks/arguments from the January 29, 2009 amendment are incorporated herein.

Applicant respectfully requests reconsideration and allowance of claims 1, 3-6, 8-11 and 13-21 that are pending in the above-identified patent application. Applicant has amended claims 1, 14, 19 and 21, canceled claims 2, 7 and 12, and amended paragraphs [0019], [0025], [0034], [0043], [0055], and [0062] of the specification. No new matter has been added by way of the amendments herein.

In view of the following discussion, Applicant submits that none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. § 102 or obvious under 35 U.S.C. § 103. Accordingly, Applicant believes that all of the claims are now in allowable form. It is to be understood that Applicant does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter, as recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing this response.

At page 2 of the Office Action, the Examiner objected to claims 14 and 21 because of informalities. These errors have been corrected by way of amendment herein, and the Examiner is respectfully requested to withdraw the objections.

At pages 2-5 of the Office Action, the Examiner rejected claims 1, 8-12, 16, 19 and 21 under 35 U.S.C. § 102(b) as being anticipated by US Publication No. 2001/0042975 A1 to David et al. (hereinafter "David"). At pages 5-7, the Examiner rejected claims 2-5 under 35 U.S.C. § 103(a) as being unpatentable over David in view of US 6,991,253 B2 to Webber (hereinafter "Webber"). At pages 7-9, the Examiner rejected claims 6, 13-14, and 17-18 under 35 U.S.C. § 103(a) as being unpatentable over David in view of US 6,086,091 A to Heinz et al. (hereinafter "Heinz"). At page 9, the Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over David in view of Webber and further in view of US Publication No. 2003/0015860 A1 to Shah et al. (hereinafter "Shah"). At page 10, the Examiner rejected claim 15 under 35 U.S.C. §

103(a) as being unpatentable over David in view of US Publication No. 2004/0164525 A1 to Gray et al. (hereinafter "Gray"). At page 10, the Examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over David in view of Applicant's Admitted Prior Art. Applicant respectfully traverses these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed.Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990).

As a gateway issue, in this response, Applicant has amended independent claims 1 and 19 to address the Examiner's arguments and put all claims in condition for allowance. Specifically, Applicant directs the Examiner's attention to the following. Claims 1 and 19 have been amended to include limitations originally set forth in dependent claims 2, 7 and 12. As the Examiner did not allege that a "V"-shaped tear line 124 having an "inflection point" or peak 144, as described in the specification and shown in Figure 3, is disclosed or suggested in David, Applicant acknowledges that this deficiency of David exists. Accordingly, with the incorporation of the limitations of claims 2, 7 and 12 into independent claims 1 and 19, no anticipation argument under 35 U.S.C. § 102 can be maintained because no single disclosure cited by the Examiner (David, Webber, Heinz, Shah and Gray) sets forth each and every limitation as arranged in the presently amended claims of the instant invention by Applicant.

Applicant now discusses independent claims 1 and 19 with respect to the Examiner's rejection of claims 2, 7, and 12 under 35 U.S.C. § 103(a). The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. The key to supporting a rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. The analysis supporting such a rejection must be explicit. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), cited with approval in *KSR Int'l Co. v. Teleflex, Inc.*, 126 S. Ct. 2965 (2006); *see also* MPEP § 2141.

Independent claims 1 and 19, and the claims depending therefrom, require apparatus providing for an internal door cladding having an airbag deployed on a door rail having a decorative layer, the decorative layer having a first plane and a second plane wherein the first plane and the second plane are not coplanar; and a tear line in the decorative layer proximate to the airbag directional shoot that traverses a substantially "V"-shaped course along both the first plane and the second plane and includes a sharp inflection point or peak such that upon an unfolding force of the airbag against the airbag flap, a tear is initiated at the inflection point or peak and propagates along the tear line.

Applicant's currently amended claims 1 and 19 recite a "V"-shaped tear line 124 having an inflection point, e.g., a peak 144, as described in paragraphs [0029], [0050] and [0055]-[0058] of the instant specification. Applicant has designed the claimed peak, for example, of the "V"-shaped tear line for the purpose of ensuring a stress concentrator where the two arms of the "V" intersect. This allows the tear to initiate at this junction and propagate along the "V"-shaped tear line, as recited in paragraph [0058], and traverse a course along two or more non-coplanar planes of the decorative layer of the door rail, as shown in Figure 3 of the instant specification. Because of this novel design, the pressure required to initiate a tear is lessened, and the pressure provided by the gas generator 116 to the airbag 110 is similarly lessened.

The Examiner has alleged that the "V"-shaped tear line as originally recited in claim 7 is unpatentable over David in view of Webber and further in view of Shah, arguing that Shah's weakened region 26 can be "any number of geometric arrangements, such as I-shaped, Y-shaped, U-shaped or others . . ." and thus obvious because those tear lines "allow for effective deployment of the airbag."

However, as previously discussed, the claimed "V"-shaped tear line lessens the pressure needed to initiate a tear, and for a tear to be initiated at a particular position. Shah states that the weakened region was designed thusly for "part design and deployment criteria," as disclosed at paragraph [0034] and Figure 2 of that reference. It is clear from Shah's geometric arrangements that no such peak or inflection point exists. Furthermore, the cover 20 and cover 120 of the Shah device is motivated by aesthetics, and manufacturability aspects, e.g., hiding the shrinkage witness lines, and bumps of the weakened region 26 and 126 and as discussed in paragraphs [0005]-[0008], [0034], [0036], and [0075] of that reference. Therefore, the shapes of Applicant's claimed tear line and peak, and the rationale for the design thereto, do not follow from the geometric arrangements disclosed by Shah, and the inventions are not interchangeable. With the foregoing in view, the Examiner fails to establish a prima facie case of obviousness because the combined teachings of David, Webber, and Shah do not disclose or suggest Applicant's "V"-shaped tear line and peak.

Furthermore, the undersigned has learned of another prior art reference previously unknown, EP 0 844 143 A1 based on German patent DE 196 48 136 A1 to Rick (hereinafter "Rick"). This reference discloses an airbag for a steering wheel having a main flap 7 that might be alleged to be "V"-shaped (See Figures 1, 2 and 5). However, upon close scrutiny, the flap 7 of Rick comprises a substantially planar tear line. In contrast, Applicant's claimed tear line accommodates designs on vehicle doors, and other areas, the course of which traverses decorative layers having two or more planes that are not coplanar, as shown in Figure 3 of Applicant's disclosure. Moreover, the Rick reference teaches that it "is crucial that the tear-open line is divided into three regions . . . [wherein the three regions] "are of approximately equal size . . . and [it is] crucial that the regions have different tear resistances." (See page 11 and Figure 5 of the Rick reference). The Rick reference uses these "different tear resistance" areas to control tearing of different regions of the airbag, as disclosed on page 11-12. Therefore, the Rick reference discloses a very different design to initiate a tear along the tear line at areas a, b, and c, as shown in Figure 5 of that reference. And, importantly, the Rick reference is directed towards airbags on steering wheels that have a tear line along a single plane, as shown in Figures 1-4. In contrast, as previously mentioned, Applicant's tear line is designed to

traverse two or more non-coplanar surfaces. With this in view, the Rick reference also fails to disclose or suggest Applicant's claimed invention.

Accordingly, at least for the foregoing reasons, Applicant respectfully requests that the 35 U.S.C. §102(b) rejection of claims 1, 8-11, 16, 19 and 21, and the 35 U.S.C. § 103(a) rejection of claims 3-6, 13-15, 17-18 and 20 be withdrawn.

Because all of the dependent claims depending from independent claims 1 and 19 include all the elements of the respective independent claim from which they ultimately depend, each such dependent claims are also allowable under 35 U.S.C. § 102 and 35 U.S.C. § 103. Therefore, in view of the foregoing, Applicant submits that all of the claims presently in the application are in condition for allowance. Accordingly, both reconsideration of this application and allowance of the claims at issue are solicited.

If the Examiner believes that there are unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Matthew Dernier, Esq., at (732) 634-7634 so that appropriate arrangements can be made for the resolution of such issues as expeditiously as possible.

Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Dated: February 25, 2009

Respectfully submitted,

By: s/Matthew B. Dernier/
Matthew B. Dernier
Registration No.: 40,989
GIBSON & DERNIER LLP
900 Route 9 North
Woodbridge, New Jersey 07095
Telephone (732) 634-7634
Attorneys for Applicant